IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

EUGENE G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, D.G., D.R., AND D.-R.,
Appellees.

No. 2 CA-JV 2019-0029
Filed September 17, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100JD201800074
The Honorable Daniel A. Washburn, Judge

AFFIRMED

COUNSEL

Czop Law Firm PLLC, Higley
By Steven Czop
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Michelle R. Nimmo, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Appellant Eugene G. challenges the juvenile court's order of February 28, 2019, terminating his parental rights to three of his children, D.G., born in November 2016, and twins, D.R. and D.-R., born in November 2017, on grounds that Eugene had been unable to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than six months. *See* A.R.S. § 8-533(B)(8)(b). On appeal, Eugene argues the court erred in finding that the Department of Child Safety (DCS) had made reasonable and diligent efforts to provide services, contends severance was inappropriate because he was "actively participating" in services at the time of trial, and maintains the court did not properly consider his ability to parent or the children's best interests. We affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 In November 2017, after twins D.R. and D.-R. were born prematurely, DCS received a report that their mother had tested positive for methamphetamines. DCS contacted Eugene, but he failed to attend team decision making meetings in December 2017 and February 2018. All of the children were removed from mother's home in March 2018, after she brought them to a parole check-in. She arrived without a required safety monitor and the children were found to be in dirty diapers, one with "greenish color build up in his eyes" and another with an ear infection. Eugene failed to attend a third team decision making meeting that month.

His paternity to the children had to be established because he had not been included on the birth certificates, and DCS noted in a March report that he had "not parented his children" to date apart from providing financial support. After about a month, the children were placed with Eugene's sister [1] and at the preliminary protective hearing, Eugene agreed to substance abuse services and individual counseling. Eugene failed to call for any of his scheduled urinalysis. The juvenile court subsequently adjudicated the children dependent as to Eugene after he failed to appear at a pretrial conference.

¶4 Eugene did not participate in services, and did not attend a review hearing in June or a permanency planning hearing in September. Although the case worker visited the property on which Eugene and his mother lived in adjacent trailers, and where the children often stayed, he and Eugene did not speak directly until September. At that point, the case worker asked Eugene what should happen with the children and asked him to talk to his sister and "come up with a plan." Thereafter, when Eugene's sister informed the case worker he had not spoken to her, the case worker sent Eugene a letter outlining the services being offered to the family. Eugene appeared at an initial severance hearing in October and entered a denial.

¶5 In November, Eugene attended some classes and substance abuse counseling and took a drug test. By the time of the severance hearing in January 2019, he had attended two or three sessions of individual counseling, but he had not participated in a parenting assessment or anger management courses, nor had he complied with urinalysis requirements that had been in place since April. After the hearing, the juvenile court granted DCS's petition to terminate Eugene's parental rights.

¶6 On appeal, Eugene argues the juvenile court erred by finding DCS had made reasonable and diligent efforts to provide reunification services, by concluding he had substantially neglected or willfully refused to remedy the circumstances that brought the children into care, and by failing to consider his ability to parent a child before terminating his parental rights. He also contends the court erred in determining severance was in the children's best interests.

[1] The children spend half the week with Eugene's sister and the remaining half at his parents' home.

¶7 Eugene's arguments amount to a request for this court to reweigh the evidence presented to the juvenile court. Unlike the situation in *Donald W. v. Department of Child Safety*, 247 Ariz. 9 (App. 2019), on which Eugene relies, DCS did not act to "undermine" Eugene's actions, indeed for the vast majority of the dependency Eugene simply failed to respond to DCS. DCS was not required to continue to press services in view of his apparent indifference to the case. *Cf. In re Yavapai Cty. Juv. Action No. J-9956*, 169 Ariz. 178, 180 (App. 1991) ("Arizona courts have long held that [DCS] has no such obligation if efforts to reunify the family would be futile.").

¶8 This court does not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002), and will defer to the juvenile court's resolution of conflicting inferences if supported by the record, *see In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115-16 (1978). In this case, because the record before us contains reasonable evidence to support the factual findings in the court's under-advisement ruling and because we see no error of law, we adopt the court's ruling. *See Jesus M.*, 203 Ariz. 278, ¶ 16 (citing *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993)).

¶9 We affirm the juvenile court's order severing Eugene's parental rights.